STATE OF MICHIGAN

COURT OF APPEALS

LAKESHORE GROUP, CHARLES ZOLPER, JANE UNDERWOOD, LUCIE HOYT, and WILLIAM REININGA,

Petitioners-Appellees,

and

KENNETH ALTMAN, DAWN SCHUMANN, GEORGE SCHUMANN, MARJORIE SCHUHAM and LAKESHORE CAMPING

Intervenors,

v

DEPARTMENT OF ENVIRONMENTAL QUALITY,

Respondent-Appellant,

and

DUNE RIDGE SA LP,

Respondent.

UNPUBLISHED
March 21, 2019

No. 340623
Ingham Circuit Court
LC No. 17-000176-AA

LAKESHORE GROUP, CHARLES ZOLPER, JANE UNDERWOOD, LUCIE HOYT, and WILLIAM REININGA,

Petitioners-Appellees,

and

KENNETH ALTMAN, DAWN SCHUMANN, GEORGE SCHUMANN, MARJORIE SCHUHAM and LAKESHORE CAMPING

Intervenors,

v

No. 340647
Ingham Circuit Court
LC No. 17-000176-AA

DEPARTMENT OF ENVIRONMENTAL QUALITY,

Respondent,

and

DUNE RIDGE SA LP,

Respondent-Appellant.

Before: SAWYER, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Respondents, the Department of Environmental Quality (DEQ) (Docket No. 340623) and Dune Ridge SA LP (Dune Ridge) (Docket No. 340647), appeal an order of the circuit court reversing Administrative Law Judge (ALJ) Daniel L. Pulter's order granting summary disposition in favor of respondents. The circuit court held that the ALJ erred by finding that petitioners lacked standing to pursue a contested case hearing under MCL 324.35305(1), challenging permits and special exceptions granted to Dune Ridge by the DEQ to develop a critical sand dune on the Lake Michigan shoreline. Respondents separately filed applications for leave to appeal and this Court granted the applications and consolidated the cases. *Lakeshore Group v Dep't of Environmental Quality*, unpublished order of the Court of Appeals, entered April 10, 2018 (Docket Nos. 340623; 340647). We reverse and remand.

I. FACTS

The facts of this case as they relate to the issues on appeal are largely undisputed. Under the sand dune protection and management act (Part 353), MCL 324.35301 *et seq*., of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq*., a party seeking to develop a critical dune area must obtain a permit. MCL 324.35304(1). Dune Ridge purchased an approximately 130-acre critical dune area with plans to develop it into a large residential development (hereinafter "the development"). Petitioners own property in the "same municipal

area and sand dunes where the development is located." Furthermore, petitioners Hoyt, Reininga, Underwood, and Zolper reside on or own property by the proposed development.

The DEQ's Water Resources Division (WRD) granted Dune Ridge's first permits and special exceptions in August 2014.[1] Under Part 353, the DEQ's decision to issue or deny a development permit or special exception may be challenged in a contested case hearing by the "applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use . . . ." MCL 324.35305(1). In October 2014, non-parties to this appeal, Lakeshore Camping, Gary Medler, and Shorewood Association,[2] filed three separate petitions for contested case hearings. Eventually, Medler and Shorewood Association reached a settlement agreement with Dune Ridge and the DEQ, wherein they stipulated to withdraw their petitions. Therefore, the only remaining petitioner in that matter was Lakeshore Camping.

On September 1, 2015, petitioners Zolper, Underwood, Hoyt, Reininga, and Lakeshore Group,[3] and would-be intervenors Kenneth Altman, Dawn Schumann, George Schumann, and Marjorie Schuham, filed an application to intervene in the contested case, claiming that their respective properties were "near and/or adjacent to the Dune Ridge development property." Dune Ridge objected, contending that because the development was occurring in an interior portion of its property, the petitioners did not own property "immediately adjacent" to the development. The ALJ rejected this argument because it "would impermissibly limit an adjoining property owner's rights to a contested case" under MCL 324.35305(1). The ALJ also rejected petitioners' argument that anyone who lived near the development had standing to initiate a contested case hearing, because the Legislature had expressly provided standing to "immediately adjacent" property owners. Therefore, the ALJ denied the motion to intervene as it pertained to Altman, Schumann, Schumann, and Schuham. However, the ALJ found that Hoyt, Reininga, Zolper, and Underwood owned property immediately adjacent to the development and granted their motion to intervene. Therefore, the petitioners in the contested case were Lakeshore Camping, Hoyt, Reininga, Zolper, and Underwood.

Dune Ridge filed a motion for reconsideration and a motion for summary disposition in regard to Lakeshore Camping. The ALJ dismissed Lakeshore Camping from the contested case because it did not own property immediately adjacent to the development. The ALJ also dismissed Hoyt and Reininga from the contested case because it found that Shorewood Association was the title owner of the property on which they resided. However, the ALJ rejected Dune Ridge's contention that the remaining petitioners, Zolper and Underwood, were not aggrieved and ordered that the contested case could proceed.

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[1] Various permits and amendments to permits were sought by Dune Ridge and eventually three contested cases involving the development were pending in front of the ALJ. On July 7, 2016, the ALJ granted a motion to consolidate the three contested cases.

[2] Petitioners Hoyt and Reininga are members of Shorewood Association.

[3] Lakeshore Group is purportedly an unincorporated association of Lakeshore Camping.

On December 14, 2015, Dune Ridge conveyed 20.6 acres of property immediately adjacent to Underwood's property to the Oval Beach Preservation Society. Thereafter, Dune Ridge filed a motion for partial summary disposition to dismiss Underwood from the contested case. In a July 7, 2016 order, the ALJ granted the motion, finding that Underwood lost standing to protest the permit because there was no development occurring on the property immediately adjacent to her property. Citing an unpublished case from this Court and a federal district court case, the ALJ found that "a party may lose standing after the commencement of an action."[4] Therefore, the only remaining petitioners in the contested case were Zolper and Lakeshore Group.[5]

On September 30, 2016, Dune Ridge sold a 15-acre section of its property to an organization called Vine Street Cottages, LLC. This property was immediately adjacent to Zolper's property. On November 18, 2016, Dune Ridge filed a motion for summary disposition, arguing that Zolper and Lakeshore Group no longer had standing. Zolper and Lakeshore Group argued, relying on *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010), that they still had standing because of their "substantial interest" in the dunes and because the statutory scheme of Part 353 implied that the Legislature intended to confer standing to them. The ALJ rejected this argument, concluding that "[w]hile *Lansing Schools* does set forth a standing analysis, it does not allow for an administrative agency to disregard an express statutory provision and look at standing under a 'substantial interest' and/or 'statutory scheme' analysis." The ALJ found that petitioners could lose standing based on actions taken by Dune Ridge and found that Zolper's rights remained protected because no development would be occurring on property immediately adjacent to him. Accordingly, the ALJ granted Dune Ridge's motion for summary disposition and dismissed the contested case.

Petitioners appealed to the circuit court. The circuit court noted that standing and mootness are jurisdictional doctrines that cannot be waived and may be raised at any time, but explained that "standing is determined at the time the suit is filed." The circuit court cited to the case of *Girard v Wagenmaker*, 437 Mich 231, 244; 470 NW2d 372 (1991), and held:

> The ALJ erred in holding that Appellee Dune Ridge could strip Appellants of standing by conveying slivers of its parcel to other entities so that Appellants were no longer owners of property immediately adjacent to the planned development. Dune Ridge's attempts to eliminate Appellant's standing are

[4] *Sharma v Mooney*, unpublished per curiam opinion of the Court of Appeals, issued September 16, 2004 (Docket No. 246257); *Granger v Klein*, 197 F Supp 2d 851, 878 (ED Mich, 2002).

[5] Although the ALJ's October 8, 2015 order denied Lakeshore Group's motion to intervene, in an order on July 7, 2016, the ALJ found that Lakeshore Group had "representational standing" based on Zolper's membership in the group. See *Trout Unlimited, Muskegon White River Chapter v White Cloud*, 195 Mich App 343, 348; 489 NW2d 188 (1992) ("A nonprofit corporation has standing to advocate interests of its members where the members themselves have a sufficient stake or have sufficiently adverse and real interests in the matter being litigated.").

> brazen, bad faith efforts to circumvent the administrative review process. The ALJ's decision was contrary to long-standing Supreme Court precedent that standing is determined at the time of filing.

The circuit court determined that Zolper, as well as Lakeshore Group, and Underwood all had standing when they intervened and reversed the ALJ's order dismissing them from the contested case. The circuit court also concluded that the ALJ's dismissal of Hoyt and Reininga "was not supported by competent, material and substantial evidence on the whole record." It found that the ALJ ignored their "equitable ownership and exclusive rights to use their individual lots pursuant to the Shorewood Association Bylaws" and found that the ALJ failed to cite authority that ownership through the Shorewood Association was insufficient under Part 353. Accordingly, the circuit court held that equitable ownership was sufficient for standing under Part 353 and reversed the ALJ's dismissal of Hoyt and Reininga. This appeal followed.

II. STANDARD OF REVIEW

This appeal arises from a contested case hearing initiated under MCL 324.35305(1), which provides that the hearing shall be conducted in accordance with the Administrative Procedures Act (APA), MCL 24.201 *et seq*. In accordance with the APA, the scope of the circuit court's review of the ALJ's decision was confined to the following:

> (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:
>
> (a) In violation of the constitution or a statute.
>
> (b) In excess of the statutory authority or jurisdiction of the agency.
>
> (c) Made upon unlawful procedure resulting in material prejudice to a party.
>
> (d) Not supported by competent, material, and substantial evidence on the whole record.
>
> (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
>
> (f) Affected by other substantial and material error of law. [MCL 24.306(1).]

Similarly, the Michigan Constitution provides in part:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the

> determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. [Const 1963, art 6, § 28.]

The role of this Court in reviewing a lower court's review of agency action is to "determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Boyd v Civil Serv Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). We review de novo as a question of law whether a party has standing. *Crawford v Dep't of Civil Serv*, 466 Mich 250, 255; 645 NW2d 6 (2002). This Court also reviews issues of constitutional law and statutory construction de novo. *Oshtemo Charter Twp v Kalamazoo Co Rd Comm*, 302 Mich App 574, 583; 841 NW2d 135 (2013).

III. STANDING ANALYSIS

A. PETITIONERS UNDERWOOD, ZOLPER, AND LAKESHORE GROUP

Respondents argue that the circuit court erred in holding that standing is conclusively established at the time the lawsuit is filed and cannot be lost during the pendency of the lawsuit. We agree that the circuit court erred in reversing the decision of the ALJ.

The Legislature explained the objective of Part 353:

> The purpose of this part is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. [MCL 324.35302(b).]

In accordance with that purpose, an entity that wishes to initiate use within a critical dune area must obtain a permit as described in MCL 324.35304. The issuance or denial of a Part 353 permit may be protested or appealed in accordance with MCL 324.35305(1), which provides:

> If an applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the applicant or owner may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the [APA]. [MCL 324.35305(1).]

The primary goal of this Court when interpreting a statute "is to discern and give effect to the Legislature's intent." *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). "We begin by examining the plain language of the statute," and "[w]here that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as

written." *Id*. Furthermore, this Court gives "respectful consideration" to the interpretation of a statute given by the administrative agency charged with administering it. *Grass Lake Improvement Bd v Dep't of Environmental Quality*, 316 Mich App 356, 362-363; 891 NW2d 884 (2016) (citation omitted); *Mich Farm Bureau v Dep't of Environmental Quality*, 292 Mich App 106, 129-130; 807 NW2d 866 (2011) (quotation marks and citations omitted).

Respondents argue that, after they filed their contested cases, petitioners Underwood, Zolper, and Lakeshore Group (via representational standing) lost statutory standing to challenge the DEQ's decisions to grant Dune Ridge permits because Dune Ridge sold those portions of its property that were immediately adjacent to petitioners' properties. This Court has explained the difference between general principles of standing and statutory standing:

> Before a court may exercise jurisdiction over a plaintiff's claim, that plaintiff must possess standing. Standing historically developed in Michigan as a limited, prudential doctrine that was intended to ensure sincere and vigorous advocacy by litigants. A litigant may have standing if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. *When a cause of action is governed by statute, the Legislature may, of course, choose to limit the class of persons who may raise a statutory challenge.* [*Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 216; 880 NW2d 793 (2015) (quotation marks, citations, and alterations omitted; emphasis added).]

Accordingly, "[s]tatutory standing simply entails statutory interpretation: the question it asks is whether the Legislature has accorded *this* injured plaintiff the right to sue the defendant to redress his injury." *Miller v Allstate Ins Co*, 481 Mich 601, 607; 751 NW2d 463 (2008) (quotation marks, citations, and alterations omitted).

The contested case hearing provided for in MCL 324.35305(1) is created by statute. As the DEQ notes, there was no common-law sand dune permitting scheme or common-law right to challenge a sand dune permit. Petitioners dispute this, but offer no supporting authority other than a citation to MEPA. By creating a mechanism by which entities could receive permits to develop critical dunes, the Legislature also limited the class of persons who could raise a challenge to the issuance or denial of those permits. See *id*.; *Salem Springs*, 312 Mich App at 216. MCL 324.35305(1) provides that if "*an applicant* . . . or *the owner of the property immediately adjacent to the proposed use* is aggrieved by . . . the issuance or denial of a permit or special exception . . . , the *applicant* or *owner* may request a formal hearing on the matter involved." (Emphasis added.) Under the plain language of the statute, a challenge to the DEQ's permitting decision may be brought only by (1) an applicant for a permit or special exception who is aggrieved by a decision of the department or (2) the owner of the property immediately adjacent to the proposed use who is aggrieved by a decision of the department. MCL 324.35305(1). This express empowerment to applicants and owners of immediately adjacent property indicates that only those two classes of parties have standing to challenge the decision in a contested case. See *Salem Springs*, 312 Mich App at 217; see also *Bradley v Saranac Community Sch Bd of Ed*, 455 Mich 285, 298; 565 NW2d 650 (1997) ("This Court recognizes

the maxim *expressio unius est exclusio alterius*; that the express mention in a statute of one thing implies the exclusion of other similar things.").

Legislative history and the DEQ's own interpretation of the statute also support our conclusion that only applicants and immediately adjacent property owners may challenge a Part 353 permit decision. Prior to 2012, MCL 324.35305(1) read: "If *a person* is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, *the person* may request a formal hearing on the matter involved." (Emphasis added.) However, the Legislature changed the language from "a person" to "an applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use." 2012 PA 297. "[C]ourts must pay particular attention to statutory amendments, because a change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute." *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). This amendment suggests that the Legislature intended to significantly limit who could challenge a Part 353 permit decision. This conclusion is bolstered by the DEQ's interpretation of the limiting effect of the language in MCL 324.35305(1) as evidenced in this appeal. *Mich Farm Bureau*, 292 Mich App at 129 ("The construction of a statute by a state administrative agency charged with administering it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons.") (quotation marks and citations omitted).

Petitioners contend that the absence of the words "only" or "must" in MCL 324.35305(1) suggests that the language is an authorization and not a limitation. This is at odds with the Legislature's express inclusion of only two classes of parties who may challenge a permit, and petitioners cannot provide any authority that the words "only" or "must" are necessary for statutory language to be limiting. Petitioners reject the use of the doctrine *expressio unius est exclusio alterius* and point to a footnote in a United States Supreme Court opinion explaining that this canon and similar doctrines of statutory construction are "subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose." *Herman & MacLean v Huddleston*, 459 US 375, 387 n 23; 103 S Ct 683; 74 L Ed 2d 548 (1983) (quotation marks and citation omitted). However, use of the statutory canon in the present case does not conflict with the Legislature's dominating purpose, as evidenced both by its limiting amendment of the statute and by Part 353's overall purpose to balance the protection of the dunes with the benefits of economic development. MCL 324.35302(b); MCL 324.35305(1).

Petitioners also argue that Part 353 should not be viewed in a vacuum and must be read in conjunction with NREPA and MEPA, which evidence that standing is more widely available than respondents contend. MEPA empowers the attorney general or "any person" to maintain a civil action in circuit court. MCL 324.1701(1). Administrative review of a critical dune permit is not a civil action in a circuit court. On the other hand, MEPA also contains the following authorization:

> If administrative, licensing, or other proceedings and judicial review of such proceedings are available by law, the agency or the court may permit the attorney general or *any other person to intervene as a party* on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct that has, or is likely to have, the effect of polluting, impairing, or

> destroying the air, water, or other natural resources or the public trust in these resources. [MCL 324.1705(1) (emphasis added).]

Petitioners argued before the ALJ that MCL 324.1705(1) empowered them to challenge the permits. However, the ALJ rejected this argument, concluding that the provision allows a party to intervene, but does not provide an independent basis for standing to initiate a contested case. The plain language of MCL 324.1705(1) supports the ALJ's conclusion, because the statute explains that when an administrative proceeding is available by law, other parties may intervene, which necessarily implies that a valid administrative proceeding must already exist in order for a party to intervene. Furthermore, the statute states that "the agency or the court *may permit* . . . any other person to intervene," demonstrating that the Legislature gave the court and the agency discretion in such matters. MCL 324.1705(1) (emphasis added).

Finally, petitioners argue that they have standing pursuant to *Lansing Sch Ed Ass'n*, 487 Mich at 359. In that case, our Supreme Court discussed constitutional principles of standing and explained how standing could be present "where a cause of action *was not provided at law*[.]" *Id*. (emphasis added). In this case, however, the Legislature has provided a "cause of action," i.e., a mechanism to challenge a Part 353 permit; thus, constitutional and common-law principles discussed in *Lansing Sch Ed Ass'n* do not apply. Petitioners may have a substantial interest in protecting the dunes and may suffer a special injury by their development, but because the Legislature limited who can challenge a permit, they are left without redress if they are not applicants or immediately adjacent property owners. See *Miller*, 481 Mich at 607 ("That is, a party that has constitutional standing may be precluded from enforcing a statutory provision, if the Legislature so provides."); see also *Olsen v Chikaming Twp*, 325 Mich App 170, 192-193; ___ NW2d ___ (2018) (rejecting *Lansing Sch Ed Ass'n* in the context of statutes that empower administrative review).

In sum, it is clear that the Legislature provided a specific scheme for challenging Part 353 permits, and that scheme extends only to Part 353 applicants and property owners whose property is immediately adjacent to the Part 353 applicants' proposed use. Petitioners' argument that other statutes or principles convey standing is unavailing and conflicts with the plain language of MCL 324.35305(1).

Next, we consider the issue whether statutory standing may be lost during the pendency of the proceeding as a result of the opposing party's conduct. Petitioners Zolper and Underwood were "immediately adjacent" property owners at the time they intervened in the contested case. At that time, it is undisputed they had standing to challenge the issuance of Part 353 permits and special exceptions in a contested case under MCL 324.35305(1). However, after Dune Ridge conveyed portions of its property, petitioners Zolper and Underwood lost their status as "immediately adjacent" property owners.

The circuit court concluded that Dune Ridge could not unilaterally divest petitioners' standing and that Dune Ridge's actions were "brazen, bad-faith efforts to circumvent the administrative review process." It further concluded that the ALJ's decision that petitioners could lose their standing "was contrary to long-standing Supreme Court precedent that standing is determined at time of filing." In reaching this conclusion, the circuit court cited *Girard*, 437 Mich at 244 ("[B]ecause we are dealing with standing, the question is what the plaintiff must

allege at the time of filing."). That standing must be determined at the time a party files suit is not a remarkable proposition. A court may not exercise jurisdiction over a plaintiff's claim unless the plaintiff has standing. *Salem Springs*, 312 Mich App at 216. But standing is a jurisdictional doctrine, and therefore, lack of standing may be raised at any time. *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355; 833 NW2d 384 (2013).

In support of their contention that a party may lose standing during the pendency of an action, respondents rely on several cases but none of them provide significant guidance in the resolution of this case. See, e.g., *Sharma v Mooney*, unpublished per curiam opinion of the Court of Appeals, issued September 16, 2004 (Docket No. 246257)[6] (in that case the plaintiff did not have standing at the time the complaint was filed); *Gorbach v US Bank Nat'l Ass'n (After Remand)*, unpublished per curiam opinion of the Court of Appeals, issued December 30, 2014 (Docket No. 308754) (in that case the party lost standing because of the party's own failure to redeem foreclosed property within the redemption period).

Respondents also speculate that there is no caselaw directly on point because the loss of standing during the pendency of an action is often characterized as an issue of mootness. "Generally speaking, a case becomes moot when an event occurs that makes it impossible for a reviewing court to grant relief." *In re Detmer/Beaudry*, 321 Mich App 49, 56; 910 NW2d 318 (2017). If "there is no possible relief that a court could provide, the case is moot and should ordinarily be dismissed without reaching the underlying merits." *Id*. Respondents rely on federal precedent to illustrate this point.[7] For example, in *Sumpter v Wayne Co*, the Sixth Circuit Court of Appeals explained how standing and mootness relate to one another:

> The doctrines of standing and mootness are similar but they are not the same. Standing seeks to ensure the plaintiff has a personal stake in the outcome of the controversy at the outset of litigation. Mootness, on the other hand, is akin to saying that, although an actual case or controversy once existed, changed circumstances have intervened to destroy standing. The common refrain that mootness is just "standing set in a time frame" best captures the temporal distinction: standing applies at the sound of the starting gun, and mootness picks up the baton from there. [*Sumpter v Wayne Co*, 868 F3d 473, 490 (CA 6, 2017) (quotation marks and citations omitted).]

Similarly, the district court for the Eastern District of Michigan has explained the relationship between standing and mootness as follows: "[I]f the plaintiff loses standing at any time during the pendency of the court proceedings, the matter becomes moot, and the court loses jurisdiction." *Granger v Klein*, 197 F Supp 2d 851, 878 (ED Mich, 2002).

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[6] "Although unpublished opinions are not binding precedent, MCR 7.215(C)(1), an unpublished opinion may be persuasive or instructive[.]" *Kern v Kern-Koskela*, 320 Mich App 212, 241; 905 NW2d 453 (2017).

[7] Lower federal court decisions are not binding on this Court, but may be persuasive. *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004).

Conversely, petitioners cite *Cleveland Branch, NAACP v City of Parma, Ohio*, 263 F3d 513, 524 (CA 6, 2001), a case in which the Sixth Circuit concluded that "standing does not have to be maintained throughout all stages of litigation." The court explained: "In essence, standing concerns only whether a plaintiff has a viable claim that a defendant's unlawful conduct was occurring at the time the complaint was filed, while mootness addresses whether that plaintiff continues to have an interest in the outcome of the litigation." *Id*. at 525 (quotation marks and citation omitted). Petitioners argue that, if this Court views the issue as one of mootness instead of standing, despite the conveyance of the immediately adjacent property, they remain "interested and aggrieved in exactly the same ways they were initially."

We conclude that, whether considered as "statutory standing lost" or the matter becoming moot, petitioners lost the right to challenge the permitting decision when, during the pendency of the proceeding, they lost their status as owners of "the property immediately adjacent to the proposed use." MCL 324.35305(1). In other words, after Dune Ridge conveyed their property that was immediately adjacent to petitioners' property, and thereby abandoned their "proposed use" or plan to develop their property despite securing the permits to do so, petitioners could not be "aggrieved by" the decision to issue the permits as contemplated by the statute. While petitioners may feel personally interested, their interest is insufficient to conform to the criteria of MCL 324.35305(1) because they are not aggrieved owners of property immediately adjacent to the proposed use. Petitioners' interests are now the same as other persons who live in the community, such as the dismissed intervenors who never had standing because they did not own "immediately adjacent" property. Accordingly, as the ALJ concluded, petitioners lost the right to pursue a contested case during the pendency of the proceeding and their dismissal was proper as their interest is not one that is recognized by the Legislature.

Further, we reject petitioners' argument that a development company may not evade administrative review by unilaterally changing a petitioner's status. Petitioners rely on federal cases in support of their position but those cases are factually distinguishable. For example, petitioners' rely on *Senter v Gen Motors Corp*, 532 F2d 511 (CA 6, 1976), a case in which the Sixth Circuit Court of Appeals considered an employment discrimination case wherein the plaintiff was given the opportunity for a promotion after he filed a discrimination complaint. *Id*. at 519. The court considered whether the offer of promotion after the filing of the complaint stripped the plaintiff of standing and held that "[i]t would be anomalous to hold that an employee, in the process of exhausting administrative remedies, should lose standing to contest the very practices of which he complained . . . merely because his employer, in the interim, offers him a promotion which he rejects." *Id*. The court further noted that "it has been held that reforms after-the-fact do not moot questions already presented for review." *Id*. at 520. The reasoning in *Senter*, a case involving civil rights, is not applicable to this case. Here, Dune Ridge did not violate any laws; it just conveyed its property as it had a legal right to do and thereby changed the property owner who was an immediately adjacent to its proposed development.

Petitioners also argue that federal courts applying Michigan law have reached similar conclusions. In *Blankenship v Superior Controls, Inc*, 135 F Supp 3d 608, 616 (ED Mich, 2015), the federal district court considered whether a plaintiff must maintain statutory standing under Michigan's Business Corporations Act (BCA) throughout the course of a shareholder suit. The BCA allowed a shareholder to bring a cause of action for minority shareholder oppression and, in

Blankenship, the plaintiff was a shareholder at the time he filed suit but was later "squeezed out." *Id*. The district court concluded that "it would be unreasonable to hold that a plaintiff could have standing to challenge acts or omissions he was subjected [to] while a shareholder when a lawsuit is filed but then lose standing to pursue that same lawsuit about acts or omissions that occurred while he was a shareholder simply because he ceases to be a shareholder after the lawsuit is filed." *Id*. at 617. Petitioners urge this Court to hold that it would be similarly unreasonable to allow Dune Ridge to strip them of standing in the midst of the contested case hearing. We disagree that the factual circumstances in this case are even remotely similar. In brief, it is not alleged in this case that Dune Ridge did anything illegal. To the contrary, it properly secured a permit for its proposed use and it had the legal right to convey property it owned. Further, after Dune Ridge conveyed its property that was immediately adjacent to petitioners' properties, petitioners would no longer live next to Dune Ridge's proposed development and could not be aggrieved in the manner contemplated by the statute by the decision to issue Dune Ridge a permit in that regard.

We recognize, as does the DEQ, that the language of MCL 324.35305(1) may create potentially unfair situations in which a Part 353 permittee can eliminate a petitioner's standing by conveying a portion of its property. But whether a statute is fair is not a proper consideration for this Court; the courts are "not the proper forum in which to debate the wisdom of the Legislature . . . ." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003). "[W]here the language of a statute is clear, it is not the role of the judiciary to second-guess a legislative policy choice; a court's constitutional obligation is to interpret, not rewrite, the law." *Id*. "[I]t is for the Legislature, not this Court, to address the policymaking considerations that are inherent in statutory lawmaking." *Brickey v McCarver*, 323 Mich App 639, 647; 919 NW2d 412 (2018).

In our resolution of this matter, we are guided by the rules of statutory construction. It is well-established that when the language of a statute is unambiguous, no judicial construction is permitted and the statute must be enforced as written in accordance with the plain and ordinary meaning of its words. *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005) (citation omitted). And here we are persuaded by the plain language of MCL 324.35305(1), including its use of the present tense, that only "immediately adjacent" property owners who are aggrieved by a Part 353 permit decision may challenge that decision. Thus, we conclude that the circuit court erred by reversing the ALJ's decision because it did not apply correct legal principles. See *Boyd*, 220 Mich App at 234. It may be inequitable to allow Dune Ridge to divest petitioners of the power to contest the permit, but it is not this Court's role to comment on the fairness of legislation. Part 353 was intended to strike a balance between the protection, preservation, and restoration of critical dunes with the benefits of economic development; that balance was struck by allowing only immediately adjacent property owners and applicants to dispute a permit decision, not the public at large. Overall, because the Legislature so narrowly limited who could challenge a Part 353 permit, we conclude that petitioners Zolper, as well as Lakeshore Group, and Underwood no longer fit the statutory criteria in MCL 324.35305(1) because they are no longer immediately adjacent property owners to the Dune Ridge development, regardless of how that came to be, and may not challenge the permit. Accordingly, the circuit court erred by reversing the ALJ's order dismissing petitioners Zolper, as well as Lakeshore Group, and Underwood from the contested case and the circuit court's decision is reversed.

B. PETITIONERS HOYT AND REININGA

Next, respondents argue that the circuit court erred when it held that equitable ownership through the Shorewood Association was sufficient for Hoyt and Reininga to have standing under Part 353 and reversed the ALJ's dismissal of Hoyt and Reininga. We agree.

Petitioners Hoyt and Reininga are members of Shorewood Association and reside on property immediately adjacent to the development—but the title owner of that property is Shorewood Association. The ALJ dismissed Hoyt and Reininga from the contested case because they were not the title owners. The circuit court reversed the decision holding that equitable ownership was sufficient for standing under Part 353.

As discussed at length above, MCL 324.35305(1) provides that "the owner of the property immediately adjacent to the proposed use" who is aggrieved by a DEQ decision to issue or deny a permit may request a formal hearing. The issue whether Shorewood Association owns the property on which Shorewood Association members reside is an issue that has already been decided by this Court. *Slatterly v Madiol*, 257 Mich App 242; 668 NW2d 154 (2003). In *Slatterly*, this Court held that members of Shorewood Association do not have "a present real-property interest" in the property on which they reside. *Id*. at 254-255. Shorewood Association was incorporated under the summer resort and assembly association act,[8] MCL 455.1 *et seq.*, in 1902. *Slatterly*, 257 Mich App at 245. This Court explained that pursuant to that act "individuals acquire *the right to use a lot* by purchasing shares in the corporation," and that the "shares are personal property." *Id*. at 251 (emphasis added).

In this case, the circuit court did not address the *Slatterly* decision. The DEQ urges this Court to adopt the holding in *Slatterly* and conclude that it is Shorewood Association that is the "immediately adjacent" property owner, not petitioners Hoyt and Reininga. Similarly, Dune Ridge contends that *Slatterly* "slams the door shut on any argument that petitioners Hoyt and Reininga own real property adjacent" to the development.

Petitioners argue that *Slatterly* is inapplicable because it refers to the summer resort and assembly association act and Shorewood Association's bylaws. Petitioners also contend that they have exclusive rights to the property as provided in the bylaws, which give them the requisite control to be considered "owners." However, the bylaws indicate that members of Shorewood Association cannot transfer their stocks without approval of the board of directors,

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[8] MCL 455.1 provides:

> That any number of persons, not less than 5, desiring to form a corporation for the purpose of owning, maintaining and improving lands and other property for the purposes of a summer resort or a park for ornament, recreation or amusement, in any city, village or township of this state, or of any adjoining state, may, by articles or agreement in writing, under their hands and seals, associate for such purpose under the name to be assumed by them in their articles of association: Provided, That no 2 corporations shall assume the same name.

are prohibited from leasing their lots without consent, and are subject to the board of directors' "police powers" on a variety of matters, such as prohibiting commercial activity, maintaining landscape and personal property on the lots, and suppressing any conduct on the lots determined to be detrimental to the association. These bylaws demonstrate that Shorewood Association members' rights are not as "exclusive" as petitioners contend.

In any case, *Slatterly* clearly explained that Shorewood Association owned the property and the members who owned shares in the corporation had certain rights and obligations related to the lots associated with their shares, but lacked a real-property interest in the property on which they resided. *Slatterly*, 257 Mich App at 253-255. We will not ignore binding precedent. MCR 7.215(C)(2) ("A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis."). Furthermore, the bylaws indicate that members do not have full exclusive control over the lots. It is not evident from the plain language of the statute that both title owners and those with an equitable interest in property should be empowered to seek a review of a Part 353 permit. Instead, the statute states that "owners" of immediately adjacent property may initiate a contested case hearing. This Court's goal is to give effect to the Legislature's intent by examining the words used in a statute. *Johnson v Pastoriza*, 491 Mich 417, 436; 818 NW2d 279 (2012). In this case, the owner is Shorewood Association, and the circuit court erred in concluding that "equitable ownership" is sufficient to confer standing under MCL 324.35305(1). Accordingly, the circuit court erred by reversing the ALJ's order dismissing petitioners Hoyt and Reininga from the contested case and the circuit court's decision is reversed. In light of our resolution of this issue, we need not also consider respondent Dune Ridge's argument that petitioners Hoyt and Reininga are barred from relitigating challenges to Dune Ridge's permit under the doctrine of res judicata.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly